IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 1215 OF 2004

Shri Keraba Shiva Shinde & ors. ... Appellants

V/s

Ramu Shiva Shinde & ors. ... Respondents

Shri Uday Warunjikar for the appellants.

Shri S. S. Shah for the respondents.

CORAM: P.V. KAKADE, J.
DATED: 1ST DEC., 2004.

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. The appellant has filed this appeal against the judgment and order passed by the District Judge, Kolhapur, dated 24.6.2004 dismissing the appeal and confirming the order passed by the lower Court decreeing the respondents-plaintiffs' suit and holding that the plaintiffs have 4/5 share in the suit property and also holding entitled to separate possession thereof. It was further held that the transaction between defendants 2 and 3 was void and, therefore, not binding on the plaintiffs. Further, there were consequential

directions relating to the issues involved.

3. The plaintiffs came with the case that the suit property located at village Udgaon is the ancestral property and belongs to the joint family. It was also submitted that there was family arrangement and as per the arrangement the parties were residing in the house at C.S. No. 844. It is to be noted that, during the pendency of the suit, the plaintiffs amended the plaint and by way of amendment, it was alleged that the defendants during the pendency of the suit transferred the land at Jaysingpur to defendant No.3 and, therefore, the document executed was sham and bogus as it was without consideration and, therefore, it was submitted that, in view of the principles of les pendens, the alleged transaction was not binding upon the plaintiffs.

4. The suit came to be challenged on various aspects. Defendant No.3 to whom the suit property was said to be sold pending the suit, who was also a party to the suit, took up the stand that he was the bonafide purchaser for value without notice. The learned Trial Judge while adjudicating the dispute on merits held that it was an admitted position vide Exh.49 which showed that defendant No.3 purchased the suit property at Jaisingpur

on 8.7.1991 i.e. pending the suit and, therefore, the alleged transaction was hit by Sec.52 of the Transfer of Property Act and, therefore, answered issue No.9 in the negative to the effect that the defendant No.3 had not proved that he was bonafide purchaser for value without notice.

5. The appeal was carried to the District Court. In the appeal memo, specific stand was taken to the effect that defendant No.3 was bonafide purchaser for value without notice and finding recorded by the learned Trial Judge was challenged. Inspite of this aspect, the learned counsel for the appellants submits that the learned lower appellate Court Judge had not touched the issue at all. Perusal of the judgment of the lower appellate Court confirmed the fact that no point was raised in that regard nor any whisper is uttered in the course of the entire judgment so as to decide the issue whether defendant No.3 was bonafide purchaser for value without notice was acceptable or liable to be discarded.

The learned counsel for the respondents submitted that the lower appellate Court has held that the transaction between defendants 1, 2 and 3 is not sham and bogus and, therefore, not binding on the plaintiffs. However, it

is settled law that in the first appeal which is last appeal of facts, it is the duty cast upon the lower Appellate Court to meet every relevant issues raised by the parties squarely and either to accept or discard it as per the evidence available on record, which appears to have not been done in the present case.

6. In view of these aspects, I am inclined to remand the matter for limited purpose to adjudicate the issues regarding status of defendant No.3. So far as other aspects are concerned, it must be noted that there are concurrent findings of facts and, therefore, this Court, on merits, is not inclined to interfere with the findings recorded by both the Courts below.

7. Hence, the matter is remanded to the District Court, Kolhapur with direction that it shall adjudicate the issue regarding status of defendant No.3 i.e. whether he is bonafide purchaser of the suit property of Jaisingpur for value without notice, after giving opportunity to both parties to be heard on merits on the basis of available evidence.

With this direction, the appeal stands disposed of with no order as to costs. Consequently, the civil

application also stands disposed of with no order as to costs.

C. c. expedited.

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